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In re Application of
OSTLUND et al.
Application No.: 10/500, 172
PCT No.: PCT/FI02/01037
Int. Filing Date: 18 December 2002
Priority Date: 28 December 2001
Attorney Docket No.: 6009-4711
For: A MOULD FOR CONTINUOUS
CASTING OR METAL STRIPS

DECISION ON
PAPERS UNDER 37 CFR 1.42

This decision is in response to applicants' "Renewed Submission under 37 CFR 1.42" filed 15 February 2004. No petition fee is required.

BACKGROUND

On 18 December 2002, applicants filed international application PCT/FI02/01037, which claimed a priority date of 28 December 2001. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 10 July 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire on 28 June 2004.

On 24 June 2004, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; an English translation of the international application; and a preliminary amendment.

On 27 September 2004, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.497 and the surcharge fee required under 37 CFR 1.492(e). The notification set a two-month time limit in which to respond.

On 10 November 2004, applicants filed separate declarations executed by Sture Ostlund as inventor and Angela Vestman and Susanne Karlsson on behalf of deceased inventor, Bertil Vestman. In a decision dated 15 December 2004, applicants' request was dismissed because the declaration was defective under 37 CFR 497(a)-(b).

On 15 February 2005, applicants filed the present renewed request accompanied by a declaration/power of attorney executed by: Sture Ostlund as inventor and Angela Vestman

and Susanne Karlsson on behalf of deceased inventor, Bertil Vestman.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

The declaration filed on 15 February 2005 is executed by Angela Vestman and Susanne Karlsson as the "legal representatives" of the deceased inventor, Bertil Vestman. The declaration submitted appears to have been executed by the proper parties under 37 CFR 1.42, however, the declaration does not satisfy the requirements under 37 CFR 1.497(b)(2).

In addition, it is noted that 37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to revised 37 CFR 1.497(b)(2), in addition to the citizenship and former residence and post office address of the deceased inventor referenced under 37 CFR 1.497(a)(3) and 37 CFR 1.63, the declaration must also provide residence, citizenship, and post office address for the legal representative. The declaration filed on 15 February 2005 provides this information with respect to Angela Vestman and Susanne Karlsson, but not the deceased inventor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(a)(3) and 37 CFR 1.63.

Further, a review of the application file reveals that the declarations filed on 15 February 2005 is defective, in that, the declaration submitted includes alterations that have not been initialed and dated. The second inventor, Sture Ostlund, has not initialed and dated the corrections made to his citizenship. (See 37 CFR 1.52(c) and Manual of Patent Examining Procedure §605.04(a)).

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is REFUSED.

Applicant is required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within **TWO (2) MONTH** from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and must include an acceptable declaration under 37 CFR 1.497 which has been executed by either the legal representative of the deceased inventor or, if no legal representative has been appointed, all of the heirs of the deceased inventor.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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